IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 216/2006

Mrs. Celina Dias, Margao, Goa. ..... Petitioner.

V/s.

Mr. Roque Antonio Sequeira,
Margao, Goa. ..... Respondent.

Mr. V.P. Thali, Advocate for the appellant.

Mr. S. S. Singbal, Advocate for the respondent.

CORAM : SMT. RANJANA P. DESAI, J.

DATE : JUNE 16, 2006.

P.C.

Heard learned Counsel for the parties. This is original defendant's writ petition. The plaintiff has filed the suit for mandatory injunction directing the defendant to demolish the illegally reconstructed house in the suit property and to restore the land to its original condition and for a judgment and decree of perpetual injunction restraining the defendant, her family, agents, labourers from continuing with the reconstruction of the house in the suit property without proper permission and leaving proper setbacks. In the said suit, the plaintiff filed an application for temporary injunction praying that by order of temporary injunction, the defendant be restrained from continuing with the illegal reconstruction of the house in the said property without leaving proper setbacks or

without obtaining permissions from the concerned authorities. The trial Court dismissed the said application. An appeal was carried to the lower appellate Court. The learned Addl. District Judge, Margao allowed the appeal. He restrained the defendant from proceeding with the construction of the room on the north-eastern side of the property under Chalta No.51 of P.T. Sheet No.209 at Margao pending the disposal of the suit. This order is challenged in this writ petition.

2. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondent. The learned Counsel for the petitioner/defendant submitted that the lower appellate Court has granted an order in favour of the plaintiff which he had never prayed for. The order travels much beyond the scope of claim of the plaintiff/respondent in the plaint. He contended that the defendant is reconstructing the said premises under valid permissions and the lower appellate Court should not have passed such a blanket order restraining the defendant from proceeding with the said construction. On the other hand, the learned counsel appearing for the respondent contended that the impugned order merits no interference since the defendant is reconstructing in a setback area. The construction is totally illegal and hence, the lower appellate Court was right in passing the order of injunction.

3. In my opinion, the impugned order needs to be modified.

What the plaintiff has prayed for is that the defendant should be restrained from continuing with the construction without proper permissions and without leaving proper setbacks and in his injunction application, the plaintiff has prayed that the defendant be restrained from continuing with the illegal construction of the house in the suit property without leaving proper setbacks or without permissions from the concerned authorities. The learned Counsel for the parties agree that no construction can be carried out without leaving proper setbacks or without permissions of concerned authorities. It is undisputed that the defendant can never carry out any construction which is without necessary permissions or without leaving proper setbacks and, if any such construction is carried out, it is totally illegal. The learned Counsel for the parties do not dispute this fact and in view of this, the petition can be disposed of in terms of the prayer made in the interim application. Hence, the following order:

Impugned order is set aside and is substituted by the following:

The defendant, her servants, agents, representatives are restrained from continuing with the illegal construction of the house in the suit property without leaving proper setbacks or without obtaining permissions from the concerned authorities. It is clarified that this Court has not expressed any opinion on the question whether the construction of the defendant is legal or not. The writ

petition is disposed of in the aforesaid terms.

SMT. RANJANA P. DESAI, J.

ssm.